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7 Attorneys for Complainant

8 BEFORE THE DIVISION OF MEDICAL QUALITY
9 BOARD OF MEDICAL QUALITY ASSURANCE
10 DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation)
13 Against:)

NO. D-2808

14 BENJAMIN F. HICKS, JR., M. D.)
15 777 Academy Drive)
16 Solana Beach, California 92075)

STIPULATION AND DECISION
OF THE BOARD

17 Certificate No. A-019132)

Respondent.)

18
19 In the interests of a prompt and speedy settlement
20 of this matter, consistent with the public interest and the
21 responsibilities of the Board of Medical Quality Assurance
22 (Board), the parties submit this Stipulation to the Division of
23 Medical Quality of the Board (Division) for its approval and
24 adoption as the final disposition of the accusation.

25 The parties stipulate the following is true:

26 1. An accusation has been served on respondent
27 Benjamin F. Hicks, Jr., M. D., and he had filed a notice of

1 defense.

2 2. Respondent has fully discussed with his counsel,
3 L. Hunter Tracht, Attorney at Law, the charges and allegations
4 of violations of the Business and Professions Code alleged in
5 the accusation and has been fully advised of his right to a
6 formal hearing and an opportunity to defend against the charges,
7 reconsideration, and appeal from any adverse decision which
8 might be rendered following the hearing.

9 3. Respondent knowingly and intelligently waives all
10 rights to a hearing, reconsideration and appeal, and any and all
11 other rights which may be accorded him pursuant to the Adminis-
12 trative Procedure Act.

13 4. Respondent admits that each and every allegation
14 contained in paragraphs 1 - 11 of the accusation is true and
15 cause exists pursuant to Business and Professions Code sections
16 725 and 2361.5 to impose discipline upon his license. The fore-
17 going admission is made for this stipulation only, and in the
18 event this stipulation and decision is not adopted, the admission
19 shall be inadmissible in any proceeding involving the parties to
20 it.

21 5. Pursuant to this stipulation, paragraphs 12 and
22 13 of the accusation are hereby dismissed.

23 WHEREFORE, THE PARTIES STIPULATE THE BOARD MAY ENTER
24 THE FOLLOWING ORDER:

25 The Physician's and Surgeon's Certificate issued to
26 respondent, Benjamin F. Hicks, Jr., M. D., is revoked. Upon
27 satisfaction of condition 1, revocation shall be stayed and

respondent placed on probation for five (5) years. The period of probation shall not begin and respondent's certificate shall remain revoked until condition 1 has been satisfied.

1. Within 60 days of the effective date of this decision respondent shall take and pass an oral clinical examination in medical therapeutics to be administered by the Division or its designee. If respondent fails this examination, respondent must wait three months between reexaminations, except that after three failures respondent must wait one year to take each necessary reexamination thereafter. The Division shall pay the cost of the first examination and respondent shall pay the costs of any subsequent examinations.

Respondent shall not practice medicine until respondent has passed this examination and has been so notified by the Division in writing.

2. Respondent shall not prescribe, administer, dispense, order or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedule V of the Act. However, respondent is permitted to prescribe, administer, dispense or order controlled substances listed in Schedules II through IV of the Act for in-patients in a hospital setting, and not otherwise.

This order forbidding respondent from personal use or possession of controlled substances or dangerous drugs does not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.

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3.

1 3. Respondent shall maintain a record of all con-
2 trolled substances prescribed, dispensed or administered by
3 respondent during probation, showing all of the following: (1)
4 the name and address of the patient, (2) the date, (3) the
5 character and quantity of controlled substance involved, and (4)
6 the pathology and purpose for which the controlled substance was
7 furnished.

8 Respondent shall make such records available
9 for inspection and copying by the Division or its designee upon
10 request.

11 4. During each year of probation, respondent shall
12 take and successfully complete, forty (40) hours of approved
13 continuing medical education in medical therapeutics in addition
14 to the usually required continuing medical education.

15 5. Respondent shall obey all federal, state and
16 local laws, and all rules governing the practice of medicine in
17 California.

18 6. Respondent shall submit quarterly declarations
19 under penalty of perjury on forms provided by the Division,
20 within thirty (30) days of the end of each quarter, stating
21 whether there has been compliance with all the conditions of
22 probation.

23 7. Respondent shall comply with the Division's
24 probation surveillance program.

25 8. Respondent shall appear in person for interviews
26 with the Division's medical consultant upon request at various
27 intervals and with reasonable notice.

1 9. In the event respondent should leave California
2 to reside or to practice outside the State, respondent must
3 notify the Division of the dates of his departure and return.
4 Periods of residency or practice outside California will not apply
5 to the reduction of this probationary period.

6 10. If respondent violates probation in any respect,
7 the Division, after giving respondent notice and the opportunity
8 to be heard, may revoke probation and carry out the disciplinary
9 order stayed. If an accusation or petition to revoke probation
10 is filed against respondent during probation, the Division shall
11 have continuing jurisdiction until the matter is final, and the
12 period of probation shall be extended until the matter is final.

13 11. Upon successful completion of probation, respon-
14 dent's certificate will be fully restored.

15
16
17 DATED: May 20, 1982

Benjamin F. Hicks, Jr.
BENJAMIN F. HICKS, JR., M. D.
Respondent

18
19
20
21 DATED: 5/20/82

L. Hunter Tracht
L. HUNTER TRACHT, Esq.
Attorney for Respondent

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5.

1 DATED: 9-2-82


LAWRENCE C. KUPERMAN
Deputy Attorney General
Attorney for Complainant

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4
5 The foregoing stipulation has been adopted by the
6 Division of Medical Quality and shall constitute its decision
7 in the above matter effective on the 12th day of November,
8 1982.

9
10 DATED: October 14, 1982


DIVISION OF MEDICAL QUALITY
Board of Medical Quality Assurance

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110 West A Street, Suite 700
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Attorneys for Complainant

BEFORE THE BOARD OF MEDICAL QUALITY ASSURANCE

DIVISION OF MEDICAL QUALITY

STATE OF CALIFORNIA

In the Matter of the Accusation)	No. D-2808
Against:)	
)	
BENJAMIN F. HICKS, JR. M.D.)	ACCUSATION
777 Academy Drive)	
Solana Beach, California)	
92075)	
)	
Certificate No. A-019132)	
)	
Respondent)	

Complainant, Robert Rowland, alleges:

1. He is the Executive Director of the Board of Medical Quality Assurance and makes this accusation in his official capacity.

2. On or about July 1, 1960, respondent was issued physicians and surgeon's certificate No. A-019132 by the board. The license is in good standing.

3. Business and Professions Code (hereinafter "code") section 2220 authorizes the Division of Medical Quality to take disciplinary action against the holder

1 of a physician and surgeon's certificate who commits unpro-
2 fessional conduct.

3 4. Code section 2361.5 provided that the clearly
4 excessive prescribing of drugs which are detrimental to the
5 patient constitutes unprofessional conduct. On January 1,
6 1980, code section 725 replaced section 2361.5 and provides
7 that repeated acts of clearly excessive prescribing of
8 drugs constitutes unprofessional conduct.

9 5. Code section 2234 provides in part that gross
10 negligence, repeated negligent acts, and incompetence are
11 unprofessional conduct.

12 6. At all times mentioned herein, Demerol and
13 Percodan were classified as schedule II narcotic controlled
14 substances under Health and Safety Code section 11055 and
15 dangerous drugs as defined in code section 4211.

16 7. At all times mentioned herein, Nembutal was
17 classified as a schedule III controlled substance under
18 Health and Safety Code section 11055 and defined as a dan-
19 gerous drug in code section 4211.

20 8. Between on or about November 3, 1978, and
21 October 29, 1980, respondent prescribed Demerol and Nembutal
22 for Lauralie S [REDACTED] as set forth more particularly in
23 Exhibit A, attached hereto and incorporated herein by reference.

24 9. Between on or about November 6, 1978, and
25 December 31, 1979, respondent prescribed Percodan for Dinar
26 S [REDACTED] as set forth more particularly in Exhibit B, attached
27 hereto and incorporated herein by reference.

1 10. The license of respondent is subject to
2 disciplinary action pursuant to Code section 2361.5 and/or
3 725 because respondent committed repeated acts of clearly
4 excessive prescribing of Demerol and Nembutal to Lauralie
5 S [REDACTED] as set forth in paragraph 8.

6 11. The license of respondent is subject to
7 disciplinary action pursuant to code sections 2361.5 and/or
8 725 because respondent committed repeated acts of clearly
9 excessive prescribing of Percodan to Dinar S [REDACTED] as set
10 forth in paragraph 9.

11 12. The license of respondent is subject to
12 disciplinary action pursuant to code section 2234, because
13 respondent was grossly negligent and incompetent, and committed
14 repeated negligent acts in his treatment of Lauralie S [REDACTED]
15 in connection with his drug prescribing practices as more
16 particularly alleged in paragraph 8.

17 13. The license of respondent is subject to
18 disciplinary action pursuant to code section 2234 because
19 respondent was grossly negligent and incompetent, and committed
20 repeated negligent acts in his treatment of Dinar S [REDACTED] in
21 connection with his drug prescribing practices as more
22 particularly alleged in paragraph 9.

23 WHEREFORE, complainant requests that the Division
24 of Medical Quality hold a hearing on the matters alleged

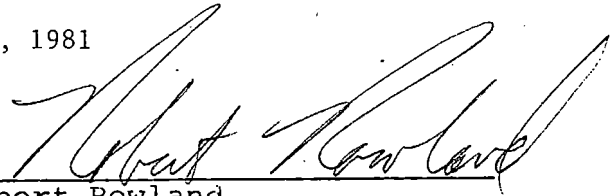
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1 herein and following said hearing take disciplinary action
2 as is provided in code section 2227, and take such other
3 and further action as may be proper.

4 Dated: September 25, 1981



Robert Rowland
Executive Director
Board of Medical Quality Assurance
Division of Medical Quality
State of California

Complainant

EXHIBIT A

DRUG	STRENGTH	AMOUNT	DATE
LAURALIE S [REDACTED]			
DEMEROL	100 mg	16	11/3/78
"	"	16	11/8/78
"	"	"	11/13/78
"	"	"	11/16/78
"	"	"	11/22/78
"	"	30	11/27/78
"	"	16	12/4/78
"	"	"	12/8/78
"	"	"	12/13/78
"	"	"	12/18/78
"	"	"	12/22/78
"	"	"	12/26/78
"	"	"	12/29/78
"	"	"	1/2/79
"	"	"	1/5/79
"	"	"	1/10/79
"	"	"	1/16/79
"	"	"	1/20/79
"	"	"	1/26/79
"	"	"	1/31/79
"	"	"	2/5/79
"	"	"	2/9/79
"	"	"	2/12/79
"	"	"	2/16/79
"	"	"	2/22/79
"	"	"	2/26/79
"	"	24	3/3/79
"	"	24	3/9/79
"	"	"	3/16/79
"	"	"	3/23/79
"	"	"	3/30/79
"	"	"	4/6/79
"	"	"	4/13/79
"	"	"	4/18/79
"	"	"	4/25/79
"	"	"	5/4/79

LAURALIE S [REDACTED]:

DRUG	STRENGTH	AMOUNT	DATE
Demerol	100 mg	24	5/11/79
"	"	"	5/13/79
"	"	"	5/25/79
"	"	"	6/1/79
"	"	"	6/7/79
"	"	"	6/13/79
"	"	"	6/21/79
"	"	"	7/6/79
"	"	"	7/9/79
"	"	"	7/16/79
"	"	"	7/20/79
"	"	"	7/27/79
"	"	"	8/3/79
"	"	"	8/10/79
"	"	"	8/20/79
"	"	"	8/24/79
"	"	"	8/31/79
Nembutal	100 mg	100	8/31/79
Demerol	100 mg	24	9/5/79
"	"	"	9/15/79
"	"	"	9/21/79
"	"	"	9/29/79
"	"	"	10/5/79
"	"	"	10/12/79
"	"	"	10/19/79
Nembutal	100 mg	100	10/22/79
Demerol	100 mg	24	10/26/79
"	"	"	11/2/79
"	"	"	11/7/79
"	"	30	11/13/79
"	"	30	11/19/79
Nembutal	100 mg	100	11/19/79
Demerol	100 mg	24	11/27/79
"	"	30	12/3/79
"	"	30	12/11/79
"	"	"	12/18/79
"	"	"	12/27/79

LAURALIE S [REDACTED]:

DRUG	STRENGTH	AMOUNT	DATE
Nembutal	100 mg	100	1/9/80
Demerol	100 mg	30	1/4/80
"	"	"	1/15/80
"	"	"	1/23/80
"	"	"	2/4/80
"	"	"	2/11/80
"	"	"	2/20/80
Nembutal	100 mg	100	2/22/80
Demerol	100 mg	30	2/25/80
"	"	"	3/3/80
"	"	"	3/11/80
"	"	"	3/21/80
"	"	"	3/28/80
"	"	"	4/3/80
Nembutal	100 mg	100	4/3/80
Demerol	100 mg	30	4/16/80
"	"	"	4/25/80
"	"	"	5/5/80
"	"	"	5/13/80
Nembutal	100 mg	100	5/13/80
Demerol	100 mg	30	6/4/80
"	"	"	6/12/80
"	"	"	6/25/80
"	"	"	7/3/80
Nembutal	100 mg	100	7/3/80
Demerol	100 mg	30	7/15/80
"	"	"	7/23/80
"	"	"	7/30/80
"	"	"	8/6/80
Nembutal	100 mg	100	8/6/80
Demerol	100 mg	30	8/15/80
"	"	"	9/2/80
"	"	"	9/9/80
Nembutal	100 mg	100	9/9/80
Demerol	100 mg	30	9/22/80
"	"	"	10/1/80

LAURALIE S [REDACTED]:

DRUG	STRENGTH	AMOUNT	DATE
Demerol	100 mg	30	10/8/80
"	"	"	10/17/80
Nembutal	100 mg	100	10/20/80
Demerol	100 mg	30	10/24/80
"	"	"	10/29/80

EXHIBIT B

DINAR S

DRUG	STRENGTH	AMOUNT	DATE
Percodan		100	11/6/78
"	"	"	11/20/78
"	"	"	11/30/78
"	"	"	12/11/78
"	"	"	12/21/78
"	"	"	12/29/78
"	"	"	1/8/79
"	"	"	1/17/79
"	"	"	1/24/79
"	"	"	2/2/79
"	"	"	2/9/79
"	"	"	2/17/79
"	"	"	2/26/79
"	"	"	3/6/79
"	"	"	3/14/79
"	"	75	3/21/79
"	"	"	3/27/79
"	"	200	4/9/79
"	"	100	4/25/79
"	"	75	5/4/79
"	"	75	5/11/79
"	"	50	5/16/79
"	"	"	5/21/79
"	"	"	5/25/79
"	"	"	5/29/79
"	"	"	6/4/79
"	"	"	6/7/79
"	"	"	6/12/79
"	"	"	6/18/79
"	"	40	6/22/79
"	"	50	6/26/79
"	"	"	7/2/79
"	"	75	7/6/79
"	"	50	7/13/79
"	"	"	7/17/79
"	"	100	7/20/79

DINAR S

DRUG	STRENGTH	AMOUNT	DATE
Percodan	"	100	7/27/79
"	"	"	8/6/79
"	"	"	8/13/79
"	"	"	8/20/79
"	"	"	8/27/79
"	"	"	9/4/79
"	"	"	9/10/79
"	"	"	9/17/79
"	"	"	9/24/79
"	"	50	10/1/79
"	"	"	10/5/79
"	"	100	10/9/79
"	"	100	10/15/79
"	"	"	10/22/79
"	"	"	10/26/79
"	"	"	11/2/79
"	"	"	11/7/79
"	"	"	11/13/79
"	"	"	11/19/79
"	"	"	11/29/79
"	"	"	12/4/79
"	"	"	12/10/79
"	"	"	12/14/79
"	"	"	12/20/79
"	"	"	12/26/79
"	"	50	12/31/79